ROWAN COMPANIES, INC.
2800 POST OAK BOULEVARD, SUITE 5450
HOUSTON, TEXAS 77056-6127

246830

2003 JUN 26 P 3:25

June 26, 2003

VIA OVERNIGHT MAIL &
FACSIMILE #202-493-2251

Docket Management Facility
[USCG-2001-8773] - 45
Department of Transportation
Room PL-401
400 Seventh Street, SW
Washington, DC 20590-0001

Re: Marine Casualties and Investigations;
Chemical Testing Following Serious Marine Incidents

To Whom It May Concern:

Rowan Companies, Inc. is a provider of domestic and international drilling and aviation services. The company operates twenty-three (23) non self-propelled Mobile Offshore Drilling Units (MODUs), twenty-one (21) of which are located in U.S. waters, in the Gulf of Mexico. Additionally, two MODUs are under construction, one at the company's Vicksburg, Mississippi facility and the other at the company's Sabine Pass, Texas facility. Twenty-one (21) of our MODUs are U.S. flagged and the remaining two (2) fly the Panamanian flag. The two MODUs under construction will be U.S. flagged.

We offer the following comments in response to the February 28, 2003 Notice of Proposed Rulemaking, 68 FR 9622:

1) *Definition of Serious Marine Incident (SMI):* 46 CFR Part 4, 4.03 (2), defines a SMI as an injury to a crewmember, passenger or other person which requires professional medical treatment beyond first aid and in the case of a person employed aboard a vessel in commercial service, which renders the individual unfit to perform routine duties. This is also the definition contained in the instructions for the Form CG 2692. Unfortunately, we have been unable to locate the Coast Guard's definition of the term

"first aid". Is the Coast Guard adopting the Department of Labor (OSHA)/Bureau of Labor Statistics definition? Additionally, what is meant by the term "professional medical treatment"? Does this include treatment by a paramedic on location? Also, is it the Coast Guard's position that MODU industrial crewmembers are construed to be a person employed aboard a vessel in commercial service?

While we understand the Coast Guard's need to comply with Public Law 105-383, we find it difficult if not impossible to require marine employers to possess clairvoyance. We can accept the requirement to test within the time parameters specified, **once** we know an incident meets the definition of a SMI. However, it is impractical and unrealistic to require the marine employer to test if "**it is likely**" that an incident will rise to a SMI. Too much subjectivity is involved in this determination. Moreover, it has been our experience over 30 percent of incidents that ultimately become classified as a SMI take 30 or more days from date of incident to evolve to this state.

Industry has generally fulfilled the intent of these regulations by testing within the current rule's definition of "as soon as practicable". A reasonable compromise is to require the tests be performed within the time parameters specified when the marine employer **learns** the incident is a SMI.

Additionally, the proposed rule's requirements for a written explanation as to why testing is not performed timely, are also unwarranted. We suggest this proposed requirement be deleted.

2) *Testing of human remains.* The Coast Guard should give consideration to the fact an employer has little if any influence on a coroner's post mortem. While we certainly have the ability to ask for the appropriate testing, we do not have any inherent right to demand such testing. Law enforcement personnel may also become involved and ultimately determine what tests will or will not be conducted.

As a U.S. flag MODU owner, we are also concerned as to the international ramifications of this proposed rule. Certain foreign jurisdictions may not allow any such testing or allow the employer any direct involvement with any forensic investigation. In such cases, compliance with the requirements of this proposed rule may not be possible.

Next, in apparent response to a comment filed in a separate rulemaking by the International Association of Drilling Contractors (IADC), our industry's leading trade association, the preamble to the proposed rule (68 FR 9623) states: "the comment requested we remove the requirement to conduct alcohol or drug testing on human remains" but fails to identify the context in which this request was made. IADC had submitted comments to the Department of Transportation's (DOT's) rulemaking

docket identifying the problems in complying with their regulations with respect to testing of human remains and recommending that consideration be given to developing a separate subpart describing the procedures to be used for collection and testing of specimens from human remains. As DOT did not revise their regulations, it is in our view, infeasible to comply with the DOT's prescriptive requirements while performing the mandated tests on human remains. Further, despite the Coast Guard's assurances, absent clarification from DOT regarding the relationship between the DOT regulations and those of the Coast Guard, we believe that the DOT's regulations must be given primacy. We endorse IADC's comments, taking into consideration our concerns enumerated above as regards testing of human remains.

3) *Addition of a waiver for supervisor-involvement in testing in accordance with of 49 CFR 40.31(c).* The preamble to the proposed rule states that: "The provisions of 49 CFR Part 40, the DOT's drug testing requirements, apply to Coast Guard required drug testing." 49 CFR 40.31(c) states:

> (c) As the immediate supervisor of an employee being tested, you may not act as the collector when that employee is tested, unless no other collector is available and you are permitted to do so under DOT agency drug and alcohol regulations.

As demonstrated by the requirements of the proposed §4.06-15, the Coast Guard anticipates that there are likely to be circumstances where collection and/or testing will necessarily be undertaken on-board the vessel under the supervision of vessel personnel. Absent authorizing Coast Guard regulations, it would not appear possible for a vessel's master to act as the collector for a watch officer under such circumstances without violating the DOT regulations. We suggest the Coast Guard add language to its regulations to permit an immediate supervisor to act as the collector when no other collector is available, without reference to DOT regulations.

4) *Marine Employer responsibility regarding indoctrination of third-party personnel.* While it is not a new requirement, we request clarification of the responsibility of the "Marine Employer" with respect to the indoctrination of third-party personnel. As the Coast Guard is aware, on MODUs engaged in OCS activities, under the provisions of 43 U.S.C. 1348, the holder of the lease or permit is given broad responsibilities for health, safety and the protection of the environment. Lessees and permittees contract for the services of a MODU and may independently contract for other service providers to conduct operations from the MODU. The lessee or permittee may also assign supervisory personnel to the MODU. The nature of these services is such that the third-party personnel conducting such operations could become "directly involved in a serious marine incident." We request confirmation that lessee or permittee supervisory personnel and third-party contractor personnel,

when working on board a MODU, are subject to the post incident testing requirements of 46 CFR subpart 4.06 and therefore should be indoctrinated in accordance with §4.06-1(e).

5) *Alcohol testing by Coast Guard or local law enforcement personnel.* The proposed §4.06-3 is not necessary. Given that these are Coast Guard regulations, and the Coast Guard conducts alcohol testing of its own volition, the marine employer should be able to presume that any testing undertaken by the Coast Guard fully satisfies the requirements of 46 CFR Part 4 with respect to that incident. The marine employer is not in a position to make the necessary assurances regarding the conduct of testing undertaken by Coast Guard or other law enforcement personnel – particularly if the requirements of 49 CFR Part 40 are applicable and must be satisfied. We suggest that §4.06-3(a)(4) be revised to read as follows: "(4) The marine employer may presume that if any alcohol-testing is conducted by the Coast Guard or law enforcement personnel it satisfies the alcohol-testing requirements of this part with respect to that incident." If this suggestion is not accepted, we recommend that §4.06-3(a)(4) be deleted.

6) *Requirements for collection and shipping kits in the proposed §4.06-3(b)(2).* It appears that the proposed §4.06-3(b)(2) would be better placed in the proposed §4.06-20 as a general requirement that any drug testing be conducted in accordance with 49 CFR part 40.

7) *Extension of testing device carriage requirements to foreign-flag vessels.* By using the term "inspected vessels", the existing 46 CFR 4.06.20 seems to limit the requirement for carriage of breath testing devices to U.S. flag vessels. The proposed §4.06-15 (a) is not limited to U.S. flag vessels. From the discussion in the preamble regarding the proposed §4.06-15, it appears that carriage of testing devices will be required of any commercial vessel, irrespective of flag, where it is likely that such a device cannot be delivered to the vessel for use within 2 hours of an incident that could become a "serious marine incident." In the regulatory evaluation, the Coast Guard does not appear to have considered that the rule may require testing devices to be carried by foreign-flag vessels.

   We request clarification of the applicability of the proposed §4.06-15 to foreign flag vessels. We suggest that the language of §4.06-15(a) be revised to parallel that provided in the proposed §4.06-15(b) by adding the following sentence: "The alcohol testing device need not be carried aboard each vessel if obtaining such a device and conducting the required alcohol test can be completed within 2 hours from the time of the occurrence of the SMI." This would also allow the test to be conducted at a hospital or by another shore-based healthcare provider.

8) *Penalties.* We believe that it is appropriate to emphasize that the civil penalty provision of 46 U.S.C. 2115 may be applied to an individual who refuses to submit to a required test. We recommend that the provisions of 46 U.S.C. 2115 be paraphrased in §4.06-70. For example: "Any person who fails to implement or conduct, or who otherwise fails to comply with the requirement of this part, is subject to the civil penalties set forth in 46 U.S.C. 2115."

9) Conflict with DOT regulations. As noted in IADC's letter of 28 April 2003 to the Office of Management and Budget, and copied to this docket, the Coast Guard and the DOT must work together to clearly and unambiguously state the individual and joint applicability of their respective drug and alcohol testing regulations.

We appreciate the opportunity to comment on this important rulemaking effort.

Sincerely,

ROWAN DRILLING COMPANY, INC.

William P. Hedrick
Vice President, HSE & Regulatory Affairs